

## **Bail Reform in Nevada – Another Obstacle for Crime Victims and Law Enforcement**

In 2018, Nevada voters overwhelmingly passed the Crime Victims' Bill of Rights, or Marsy's Law. This amendment to Nevada's Constitution gave crime victims expressly stated and enforceable constitutional rights in the criminal justice process. However, bail reforms like those in New York, California, and several other States, have recently been enacted in Nevada that frustrate these voter-led efforts to help crime victims. More importantly, they are a risk to public safety and to victims.

Marsy's Law was named after Marsalee (Marsy) Nicholas, a university student, who was stalked and killed by her ex-boyfriend in 1983. Only a week after Marsy was murdered, Marsy's mother walked into a grocery store after visiting her daughter's grave and was confronted by the accused murderer. She had not been informed that he had been released on bail. Her story is typical of the pain and suffering crime victims endure. Nevada voters acknowledged, and began to cure, this injustice in passing Marsy's law which requires fairness, protection, and notice to crime victims.

This week, April 24-30, 2022, is National Crime Victims' Rights Week (NCVRW). For 40 years, NCVRW has challenged the Nation to confront and remove barriers to achieving justice for all victims of crime. Each year, communities across the country revisit the history of the victims' rights movement, celebrate its progress, and recommit to further advancements. Nevada's bail-reform movement is a critical topic to examine during this important awareness week.

So-called bail reform is sweeping across our country. It has created a revolving door environment where defendants are often released within hours of arrest without a bail obligation. In many circles, this movement seeks to eliminate the bail system entirely. Nationwide, there are countless examples of recently enforced bail reform measures that have resulted in higher crime, higher recidivism, more victimizations, and a slower judicial process. Unfortunately, the public is often unaware that these decisions have been made by the courts and legislatures. What is worse is that victims of crime are the first to feel the consequences of these decisions.

The bail reform movement is happening in Nevada. Sweeping bail reform measures have already occurred with the most significant one yet to come. These changes are already impacting crime and crime victims, and there is a growing need for resources to protect against it.

To be clear, reasonable bail prior to conviction is a constitutional right except for those charged with 1<sup>st</sup> degree murder. What is "reasonable bail" is a decision that rests within the discretion of the court. Historically, in making that determination a judge considered a multitude of factors, including severity of the crime and a defendant's criminal history, with the primary goals being the protection of the community and the presence of the accused at future proceedings. Unfortunately, the bail reform movement is shifting from those primary goals of bail to an apparent goal of release.

In April of 2020, the Nevada Supreme Court issued the *Valdez-Jimenez* decision, which profoundly transformed bail determinations in Nevada. The opinion created a presumption of release without bail for anyone charged with any crime absent clear and convincing proof presented by prosecutors supporting a different conclusion. Moreover, *Valdez-Jimenez* required that proof be presented promptly. Additionally, the ruling requires courts to consider what the defendant can afford to pay when setting bail. Thus, new daily court dockets were created that require prosecutors throughout the state to appear and present evidence why bail should be set. A failure to do so will result in the mass release of pretrial arrestees, regardless of their crime. For context, the Washoe County District Attorney's Office receives over 10,000 criminal cases a year on average.

The 2021 Nevada Legislature codified the *Valdez-Jimenez* decision into statutory law and further weakened the existing bail system while implementing more unfunded mandates. Under Assembly Bill 424, initial-appearance bail hearings are required to occur 7 days a week, 365 days a year. Due to the unworkable requirements of the bill and its massive fiscal impact of tens of millions of dollars, statewide law enforcement agencies, judges, counties, and prosecutor offices throughout the state opposed Assembly Bill 424 on the grounds that the system was not equipped for the change and a lack of resources to implement it would compromise safety.

Here in Washoe County, it is not as simple as just providing prosecutors to staff these hearings on the weekends and holidays. Preparation requires a team of prosecutors, victim advocates, investigators and support staff to review and obtain critical case information from law enforcement and communicate with crime victims, often within hours of the crime. Unfortunately, and despite the collective opposition, Assembly Bill 424 passed and was signed into law. It becomes effective on July 1st.

A reasonable bail system is critical to the welfare of crime victims and all in our community. I fully support providing the courts with pertinent information so appropriate bail determinations can be made. Accused individuals who are a low risk to the safety of our public with a high likelihood to re-appear in court most certainly should be afforded the least restrictive bail conditions. However, as adopted policy in our state further alters historical bail practices, the result is the expected release of more criminals without proper consideration of the risks they pose to their victims and the community. Prosecutor's offices must receive adequate funding to meet these new obligations and all stakeholders in the criminal justice system must enforce Nevada's crime victims bill of rights. A failure to do so, will result in hasty ill-informed bail decisions and cause a step backwards in the voter-supported victim rights' movement in Nevada.